
TOO GOOD TO BE TRUE....

A Column on Consumer Issues

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Consumer Protection and Antitrust Division

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UNSOLICITED FAX ADVERTISEMENTS

If you run a business, chances are your fax machine receives a lot of unsolicited messages. Where are these messages coming from and why are you receiving them?

Unsolicited fax advertisements are messages promoting goods or services sent to you without your permission or from someone who does not have an established business relationship with you. An unsolicited advertisement faxed to your home or business must include, at least on the first page, the sender's identity and telephone of the sender or the sending fax machine, plus the date and time the fax is sent.

If your business receives unsolicited facsimiles advertisements, you may wish to fax the company that you want to be removed from its contact list. If that does not stop the unsolicited faxes, you may wish to consider enforcing your rights under federal or state laws.

These unsolicited fax advertisements violate the federal Telephone Consumer Protection Act of 1991 (47 U.S.C. § 227). This Act expressly prohibits sending unsolicited advertising by fax. Penalties for violations of the federal Act include an injunction to stop the practice as well as statutory and actual damages from \$500 up to \$1,500 per violation.

The Telephone Consumer Protection Act provides that the law may be enforced in state court, including Small Claims Court. The Act also provides that the recipient of an unsolicited fax advertisement may recover for each violation the greater of \$500 statutory damages or the actual monetary loss suffered. In addition, if the violation is knowing or willful, the court may triple the damage award.

North Dakota Century Code 51-07-23, Unsolicited Telefacsimile Advertising, states "it is unlawful for any person to initiate the unsolicited transmissions of a telefacsimile message promoting a good or service for purchase by the recipient of the message." However, this does not apply to a fax sent to a recipient with whom the sender has a "prior contractual or business relationship," nor does it apply to faxes sent between 9 p.m. and 6 a.m. that are less than two pages.

If unwanted solicitations are clogging your fax machine, you may want to consider a small claims court action and the remedies provided by the Telephone Consumer Protection Act of 1991.

Information about small claims court proceedings is available at:
www.ndcourts.com/court/forms/Small/forms.htm.

The Attorney General's Consumer Protection Division investigates allegations of fraud in the marketplace. Investigators also mediate individual complaints against businesses. If you have a consumer problem or question, call the Consumer Protection Division at 328-3404, toll-free at 1-800-472-2600, or 1-800-366-6888 (w/TTY). This article and other consumer information is located on our website at www.ag.state.nd.us.

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